

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:WR:NCA:SF:TL-6092-99
KGCroke

date: January 25, 2000

to: Chief, Examination Division, Northern California District
Attn: Bonnie Miller

from: District Counsel, Northern California District, San Francisco

subject: New [REDACTED]
Power of Attorney for [REDACTED]

DISCLOSURE STATEMENT

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ISSUE

Whether a power of attorney executed by New [REDACTED]'s president meets the requirements of Treas. Reg. § 601.503 such that it can be relied upon by Exam.

FACTS

Exam intends to audit the Form 1042 withholding tax return of [REDACTED], ("[REDACTED]") for [REDACTED]. The Form 1042 was executed by [REDACTED]'s senior vice president. A Power of Attorney and Declaration of Representative ("POA"), Form 2848,

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was provided to Exam. The POA identifies the taxpayer as "[REDACTED]" and the representative as [REDACTED]. The tax matter is identified as withholding of tax on foreign corporations, Forms 1042 and 1042-S, for [REDACTED]. The POA was executed by the President of New [REDACTED], [REDACTED], in [REDACTED]. [REDACTED] holds no positions at [REDACTED]. At the time the POA was executed, [REDACTED] was a second tier subsidiary of New [REDACTED]. Now, however, because of a reorganization in [REDACTED], New [REDACTED] and [REDACTED] are brother-sister corporations.

LAW

Treas. Reg. § 601.503 sets forth requirements of a power of attorney. It provides that a power of attorney must contain the:

- (1) name and mailing address of the taxpayer;
- (2) identification number of the taxpayer (i.e., social security number and/or employer identification number);
- (3) employee plan number (if applicable);
- (4) name and mailing address of the recognized representative(s);
- (5) description of the matter(s) for which representation is authorized which, if applicable, must include--
 - (i) the type of tax involved;
 - (ii) the Federal tax form number;
 - (iii) the specific year(s)/period(s) involved; and
 - (iv) in estate matters, decedent's date of death; and
- (6) a clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s).

In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that he/she has such authority.

DISCUSSION

The Form 1042 was filed by [REDACTED]. It is the taxpayer for purposes of the requirements of Treas. Reg. § 601.503. The POA

provided by Exam lists New [REDACTED] and subsidiaries as the TP and lists New [REDACTED]'s EIN. Arguably, [REDACTED] is included by the reference to subsidiaries. Given that [REDACTED] is no longer a subsidiary of New [REDACTED], however, is a cause of concern. More of a problem is the fact that the POA does not list the EIN of [REDACTED]. Finally, the POA is not executed by an officer of [REDACTED] with the authority to bind the corporation.

For the following reasons, we advise that you get a new POA listing [REDACTED] as the taxpayer, [REDACTED]'s EIN, and that is executed by an officer of [REDACTED] with the authority to bind the corporation.

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By: _____
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